UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:21-cv-253-RJC-DCK

| SEAN FITZGERALD MESCALL, et al., |) |
|---|-------------|
| Plaintiffs, |) |
| v. | ORDER |
| UNITED STATES DEPARTMENT OF TREASURY, et al., |) |
| Defendants. |))) |

THIS MATTER comes before the Court *sua sponte*.

This *pro se* action was filed by Plaintiffs Sean Fitzgerald Mescall ("Sean") and his father Gerald T. Mescall ("Gerald") while Sean was incarcerated for securities fraud, wire fraud, and money laundering in relation to a Ponzi scheme, Case No. 3:12-cr-215-RJC. (Doc. No. 1). The Complaint challenges the administrative offset of Gerald's Social Security benefits pursuant to a civil Judgment entered by this Court in relation to the Ponzi scheme, Case No. 3:09-cv-387.

On September 14, 2021, the Court dismissed Gerald from this action without prejudice, for failing to timely pay the filing fee or file a complete Application to proceed *in forma pauperis.* (Doc. No. 18). The Plaintiffs appealed the September 14 Order, and this Court granted Plaintiffs' Motion asking the Court to stay the instant action while the interlocutory appeal was pending. (Doc. No. 27). The Fourth Circuit Court of Appeals dismissed the interlocutory appeal on February 23, 2022. See (Doc. No. 28). Accordingly, the Clerk of Court will be instructed to lift the Order staying this action, (Doc. No. 27).

Further, it appears on the face of the Complaint that Sean does not have standing to

¹ In the Order, the Court also denied several Motions that are not pertinent to this discussion. (Doc. No. 18).

challenge the offset of Gerald's Social Security benefits. Sean shall, within 14 days of this Order,

file a Memorandum explaining why he has standing in this case. The failure to timely comply with

this Order will result in Sean's dismissal as a Plaintiff from this action without further notice.

IT IS THEREFORE ORDERED that:

1. The Clerk of Court is instructed to lift the Order staying the case pending Plaintiffs'

interlocutory appeal, (Doc. No. 27).

2. Plaintiff Sean Fitzgerald Mescall shall have fourteen (14) days from the date of

this Order in which to file a Memorandum explaining why he has standing to

proceed in this action. If Plaintiff Sean Fitzgerald Mescall fails to timely comply

with this Order, he will be dismissed as a Plaintiff from this action without further

notice.

Signed: April 18, 2022

Bobert J. Conrad, Jr.

United States District Judge